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Paper No. 18

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In re Application of:
David William House
Application No. 09/478,136
Filed: January 5, 2000
For: **COCHLEAR IMPLANTS WITH A
STIMULUS IN THE HUMAN ULTRASONIC
RANGE AND METHOD FOR STIMULATING
A COCHLEA**

MAIL
NOV 04 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600
DECISION
ON PETITION

This is a decision on the request filed on September 21, 2004 which is treated as a Petition to Withdraw the Holding of Abandonment pursuant to MPEP §711.03 and 37 C.F.R. §1.181. No fee is required.

The petition is granted.

This application became abandoned for failure to timely file a response to the restriction requirement mailed November 4, 2003, which set a shortened statutory period of one (1) month to reply. A Notice of Abandonment was mailed on September 7, 2004.

Petitioner alleges to have timely filed a proper response to the notice of non-responsive Office action mailed November 4, 2003. In support, petitioner has provided as evidence, a copy of said response, which included a Certificate of Facsimile Transmission dated November 21, 2003. Also included with the response is a copy of an Auto-Reply Facsimile Transmission indicating that a 2-page document from Petitioner was received in the U.S. Patent and Trademark Office on November 21, 2003.

37 C.F.R. § 1.8 Certificate of mailing or transmission states in part:

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

- (1) Correspondence will be considered as being timely filed if:
 - (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
 - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
 - (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
 - (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated. [emphasis added]

Although Petitioner is not the one who executed the certificate of transmission and there is no personal statement from the person who signed the certificate of transmission, the Auto-Reply Facsimile Transmission report is evidence that the documents were in fact transmitted to the Office. Accordingly, it is deemed that the original response was received on November 21, 2003 and subsequently misplaced. The Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The application file is being forwarded to the technical support staff for entry of the copy of the original response which accompanied the subject petition. Thereafter, the application will be forwarded to the Examiner for appropriate action in due course.



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